201500557 Michael Mcavoy

At 3:00 pm on January 19, 2015, officers responding to a report of a gunpoint robbery in Staten Island stopped a man who was wearing clothing that was reasonably close to, but not exactly the same as, the description of the suspect in the robbery. Officers stopped the man and frisked him while he complained loudly. The officers found no weapons or contraband on the man and released him. The man then began taunting the group of officers that were across the street. Most of the officers ignored the taunts (which, again, were coming from a man who had just been stopped and searched under suspicion of a gunpoint robbery that he did not commit). Officer Mcavoy, however, crossed the street towards the building the man was standing in front of, followed him into the vestibule, punched him repeatedly, and arrested him for assaulting a police officer.

PO Mcavoy acknowledged following the man into the vestibule, but stated that the man struck him first, and that he struck back to defend himself. Video footage from inside the vestibule showed PO Mcavoy chasing the man when a woman gets between them and tries to separate them. PO Mcavoy reaches around the woman to grab the man and repeatedly punches him in the face. The man never struck PO Mcavoy.

The CCRB found that PO Mcavoy used excessive force against the man and made a false official statement when he claimed the man had struck him first.

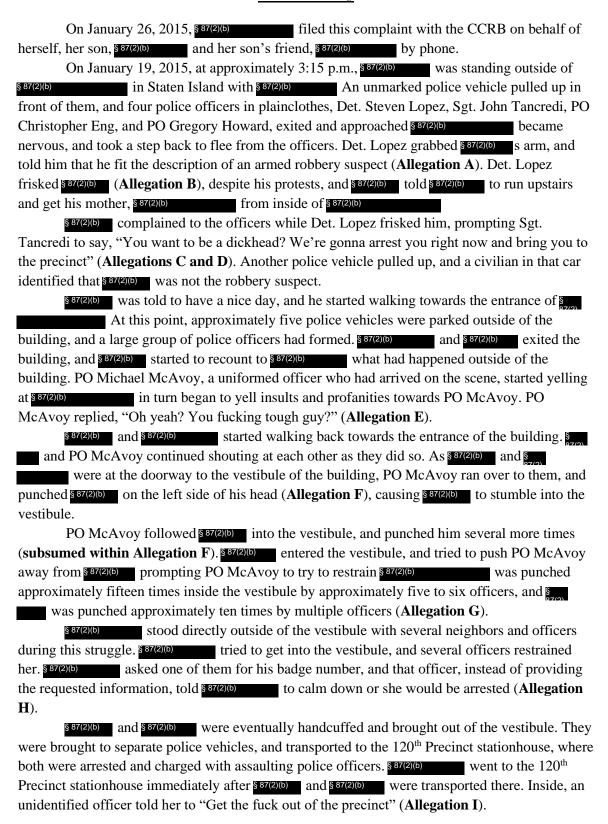
PO Mcavoy was issued a command discipline B for this incident.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Tean	n:	CCRB Case #:	✓ Force	✓ Discourt.	☐ U.S.
Harry Feigen	Squa	d #4	201500557	☐ Abuse	O.L.	Injury
				<u> </u>	1,01,00	
Incident Date(s)	Loca	tion of Incident	t:	Precinct		EO SOL
Mon, 01/19/2015 3:00 PM				120	07/19/2016	7/19/2016
Date/Time CV Reported	CV I	Reported At:	How CV Reported	d: Date/Ti	me Received at CC	RB
Mon, 01/26/2015 1:30 PM	CCR	В	Phone	Mon, 01	1/26/2015 1:30 PM	1
Complainant/Victim	Type	Home Ad	dress			
Witness(es)		Home Ad	dress			
C-1-1-4 Off	CL! 11	TI II	Com			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Michael Mcavoy	15100	§ 87(2)(b)	120 PCT			
2. Officers	1251	§ 87(2)(b)	120 PCT			
3. DTS Steven Lopez	4354	§ 87(2)(b)	120 PCT			
4. SGT John Tancredi5. An officer	01061	3 01 (2)(b)	INT CIS 120 PCT			
Witness Officer(s)	Shield No	Tax No	Cmd Name			
1. POM Gregory Howard	18811	§ 87(2)(b)	120 PCT			
2. POF Christine Christensen	00192	§ 87(2)(b)	120 PCT			
3. POM Christophe Eng	15563	§ 87(2)(b)	120 PCT			
4. POM Eric Johnson	07704	§ 87(2)(b)	120 PCT			
5. POM Joseph Innocente	14311	§ 87(2)(b)	120 PCT			
6. SGT Kizzy Adonis	2263	§ 87(2)(b)	120 PCT			
Officer(s)	Allegation			In	vestigator Recor	nmendation
A . DTS Steven Lopez	Abuse of Auth Island, Det. Ste	ority: Near ^{§ 87(2} even Lopez stoj	pped § 87(2)(b) in Sta	ten A	§ 87(2)(g)	
B . DTS Steven Lopez		ority: Near ^{§ 87(2} even Lopez fris		ten B	§ 87(2)(g)	
C . SGT John Tancredi	Discourtesy: N John Tancredi	lear ^{§ 87(2)(b)} spoke rudely to	in Staten Islands	nd, Sgt. C	§ 87(2)(g)	I
D. SGT John Tancredi		ority: Near ^{§ 87(2} nn Tancredi thro	in Sta eatened to arrest § 87(2)(§ 87(2)(g)	
E . POM Michael Mcavoy	Discourtesy: N Michael Mcav	lear ^{§ 87(2)(b)} oy spoke rudely	in Staten Islan y to ^{§ 87(2)(b)} .	nd, PO E	§ 87(2)(g)	
F. POM Michael Mcavoy	Force: Inside § Michael Mcav		in Staten Island, Peal force against \$87(2)(b)		§ 87(2)(g)	
G. Officers	Force: Inside sused physical f	87(2)(b) Force against ^{§ 87}	in Staten Island, of and \$87(2)(b)	fficers G	§ 87(2)(g)	

Officer(s)	Allegation	Investigator Recommendation
H. An officer	Abuse of Authority: Near \$87(2)(b) in Staten Island, an officer refused to provide his shield number to \$87(2)(b).	H. § 87(2)(9)
I . An officer	Discourtesy: Inside of the 120th Precinct stationhouse, an officer spoke rudely to § 87(2)(b)	I. § 87(2)(9)
J. POM Michael Mcavoy	Other: PO Michael McAvoy intentionally made a false official statement to the CCRB, in violation of Patrol Guide Procedure 203-08.	J . § 87(2)(g)

Case Summary

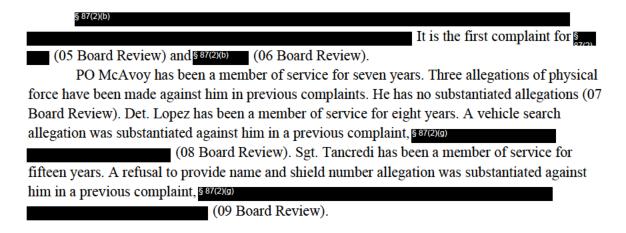


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Mediation, Civil, and Criminal Histories

This case was	not suita	ible for mediation, due to §8	7(2)(b) and § 87(2)(b)	s arrests. § 87(2)(b)
and § 87(2)(b) s crimin	nal cases	related to this incident are b	oth still open. Bot	h have their next
court date on § 87(2)(b)	(01	Board Review and 02 Board	d Review) § 87(2)(b)	
	§ 87(2)(b)	s attorney filed a notice of	claim in regards to	this incident (03
Board Review).				

Civilian and Officer CCRB Histories



Findings and Recommendations

Explanation of Subject Officer Identification

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the investigation was unable to determine which officer is the subject of **Allegation H**. Therefore, it is pleaded against an officer of the 120th Precinct.

could not recall if, when she later went to the 120th Precinct stationhouse, it was PO McAvoy who told her to "Get the fuck out of the precinct," or a second, unidentified officer. S87(2)(b) was supposedly present when an officer made this comment, but he did not mention any such conversation between an officer and [887(2)(6)] while in the stationhouse. PO McAvoy denied having any conversation with \$87(2)(b) at the stationhouse (14 Board Review), and the desk sergeant on that date, Sgt. Kizzy Adonis, did not recall \$87(2)(0) coming into the stationhouse, nor did she recall any officer telling her to "get the fuck out" (15 Board Review). PO Johnson was inside of the stationhouse processing 887(2)(b) and 887(2)(b) arrest reports around the time \$87(2)(b) went to the stationhouse, but he did not recall seeing inside of the stationhouse. PO Christensen saw \$87(2)(b) inside of the 120th Precinct stationhouse when she returned from \$87(2)(b) but she did not see speak with any officers, nor could she recall if PO McAvoy was in the stationhouse at that time (16 Board Review). Given the uncertainty in §87(2)(b) own statement regarding which officer made the remark, and the lack of corroboration from \$87(2)(b) or any officers who were inside of the stationhouse at that time, the investigation was unable to determine which officer is the subject of **Allegation I**. Therefore, the allegation is pleaded against an officer from the 120th Precinct.

Allegations not pleaded

- A threat of arrest was not pleaded in regards to the statement made to \$87(2)(0) At the time, she was attempting to get inside of the vestibule of \$87(2)(0) and interfere with officers who were making a lawful arrest under chaotic circumstances.

 \$87(2)(0)
- A retaliatory arrest was not pleaded in regards to \$87(2)(0) s arrest. While PO McAvoy could have used discretion and allowed \$87(2)(0) to go back inside of \$87(2)(0) had engaged in disorderly conduct by yelling profanities at the group of officers while a crowd of civilians formed around him moments before PO McAvoy approached and arrested \$87(2)(0)

Allegation A – Abuse of Authority: Near \$87(2)(b) in Staten Island, Det. Steven

Lopez stopped \$87(2)(b)

Allegation B – Abuse of Authority: Near \$87(2)(b) in Staten Island, Det. Steven

Lopez frisked \$87(2)(b)

The following facts are undisputed. A robbery at gunpoint in front of \$87(2)(0) was reported over radio communication at 2:56 p.m. on January 19, 2015. At 3:04 p.m., the suspect was described as \$87(2)(0) wearing black pants and a grey hoodie, and was said to be heading on foot towards the Verrazano Narrows Bridge on Narrows Road North (17 Board Review). At 3:15 p.m., Sgt. Tancredi, Det. Lopez, PO Howard, and PO Eng, who were driving through the area at the time, observed \$87(2)(0) in front of \$87(2)(0)

Page 4 CCRB Case # 201500557 a location two blocks north and four blocks east of \$87(2)(b) (18 Board Review).

\$87(2)(b) is a \$87(2)(b) on the date of the incident, and was wearing grey pants and a black hooded sweatshirt. Upon observing \$87(2)(b) the officers all agreed that he fit the description they had received. They exited their vehicle and approached who nervously took several steps backwards away from the officers. The officers then questioned \$87(2)(b) about where he was coming from, and told him that he fit the description of an armed robbery suspect in the area. Det. Lopez then frisked \$87(2)(b)

Police officers have reasonable suspicion to detain an individual if that person generally matches the description of a suspect, the individual is in close proximity to the site of the crime, and a short amount of time has elapsed between the commission of the crime and the officers' observation of the individual. People v. Bennett, 37A.D.3d 483 (2nd Dept.-2007) (19 Board Review). Furthermore, when responding to a report of a violent crime in which the perpetrator is described as being armed, police officers, upon lawfully stopping an individual in relation to the report, can frisk said individual for weapons without having to articulate an independent belief that the individual is armed (e.g. observation of bulges, furtive movements, ect.). People v. Torres, 239 A.D.2d 154 (2nd Dept. – 1997); People v. Mack, 26 N.Y. 2d 311 (1970). (20 Board Review).

Although solution is clothing did not exactly match what had been reported to the officers, the colors—grey and black—were correct, as was the fact that he was wearing a hooded sweatshirt. Solution also looks older than 18, and could easily pass for a 24 year-old (21 Board Review). Given that solve and color of his attire was sufficiently consistent with that of the suspect, and that the type and color of his attire was sufficiently consistent with that of the suspect, solve appearance was reasonably close to the suspect's description. Additionally, was within a few blocks of the location of the crime, and was in the general direction that the suspect had been said to be fleeing. Lastly, only twenty minutes had elapsed between the initial report of the robbery and the officers' observation of solve.

§ 87(2)(g)

Allegation C – Discourtesy: Near \$87(2)(b) in Staten Island, Sgt. John Tancredi spoke rudely to \$87(2)(b)

Allegation D – Abuse of Authority: Near \$87(2)(b) in Staten Island, Sgt. John Tancredi threatened to arrest \$87(2)(b)

It is undisputed that serious was angry and swearing at the officers during the stop, especially following Det. Lopez' frisk of serious It is in dispute, however, whether Sgt. Tancredi made any statements in response to serious s comments.

alleged that Sgt. Tancredi stated, "You want to be a dickhead? We'll arrest you right now and take you to the precinct." Ser(2)(6) as girlfriend, Ser(2)(6) was within earshot of the conversation, but did not cooperate with the investigation to provide a statement. Sgt. Tancredi denied making the alleged statements (22 Board Review). PO Howard and PO Eng

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denied hearing Sgt. Tancredi make the alleged statement (23 Board Review), and Det. Lopez did not recall hearing Sgt. Tancredi make the alleged statement (24 Board Review). Allegation E – Discourtesy: Near § 87(2)(b) in Staten Island, PO Michael McAvoy spoke rudely to § 87(2)(b) It is undisputed that, after the stop of \$87(2)(0) had concluded, \$87(2)(0) remained outside of \$87(2)(b) and yelled profanities and insults at the group of officers that had formed was standing with \$87(2)(b) outside of the building at this time. alleged that he yelled, "Suck my dick," to PO McAvoy, to which PO McAvoy responded, "Oh yeah? You fucking tough guy?" \$87(2)(b) stated that PO McAvoy's response, however, was only, "What tough guy? What?" All of the officers questioned about this statement either denied or did not recall whether PO McAvoy made the statement. This part of the incident was not captured on video, and regardless; the video that is available has no audio component. Allegation F – Force: Inside 887(2)(6) in Staten Island, PO Michael McAvoy used physical force against § 87(2)(b) The following is undisputed. §87(2)(b) stood outside of §87(2)(b) with § and several neighbors for approximately thirty seconds. During that time, \$87(2)(b) was yelling profanities at the group of officers outside of the building. The officers were telling everyone to go back inside of the building. S87(2)(b) and the other civilians started walking back towards the entrance of \$87(2)(b) and the group of officers walked behind them at a distance. Just as (\$37(2)(b) was about to enter the vestibule of the building, PO McAyoy ran from the rear of the group of officers towards 887(2)(5) and PO McAvoy all stumbled into the vestibule together. The video footage which corresponds to this part of the incident begins at the 15:15 mark (25 Board Review). The video footage from inside of the vestibule of the building shows the following (26 Board Review). At 1:07, PO McAvoy enters the vestibule, and appears to be trying to grab (the male in a black sweatshirt and grey pants). §87(2)(b) (the female wearing a green shirt and green pants) is positioned between the two, and trying to push them apart. Three other civilians are also inside of the vestibule. At 1:08, PO McAvoy's hand is at the side of \$87(2)(0) s

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head, but it is unclear whether PO McAvoy is attempting to grab \$87(2)(b) or is punching him in
the head. \$87(2)(b) is still attempting to push her way between the two. \$87(2)(b) appears to be
backing away from PO McAvoy at this time, and attempting to push him away, although
s arms and hands are blocked by the camera angle. At 1:09, PO McAvoy punches [S87(2)(0)] in the right side of his head with a closed fist, as
is still struggling to get between \$87(2)(b) and the officer. As a result, \$87(2)(b) stumbles into a corner of the vestibule, and continues to hold out his arms to try to push PO
McAvoy away. §87(2)(b) is still pushing her way between the two at this time, and PO
McAvoy appears to punch \$87(2)(b) two more times. These second punches are at 1:12 and 1:13,
although it is difficult to see from the footage where PO McAvoy's punches land on \$87(2)(6)
This footage generally corroborates the accounts given by \$87(2)(b) and \$87(2)(b) as they
alleged that PO McAvoy punched \$87(2)(b) over \$87(2
According to the NYPD Patrol Guide, officers must use the minimum force necessary to
overcome resistance when effecting an arrest (27 Board Review).
§ 87(2)(g)
The inside of the vestibule was clearly a chaotic scene, and both \$87(2)(b) and \$87(2)(b)
were pushing PO McAvoy away. PO McAvoy's response, however, to punch \$87(2)(b)
in the side of the head, and to punch him approximately two more times afterwards,
(g)
§ 87(2)(g)
8 01 (2)(9)
Allegation G – Force: Inside 887(2)(5) in Staten Island, officers used physical
force against \$87(2)(b) and \$87(2)(b)
The video footage from inside of the vestibule of \$87(2)(6) shows at 1:13 that,
The video footage from inside of the vestibule of \$87(2)(0) shows at 1:13 that, when PO McAvoy had \$87(2)(0) in the corner of the room, \$87(2)(0) (the black male in the red

CCRB Case # 201500557

sweatshirt, and no hat on) grabbed PO McAvoy's torso and placed himself between PO McAvoy and \$87(2)(0) PO McAvoy, PO Eng, and PO Christensen then all grab \$87(2)(0) and a struggle ensues in which the group stumbles into the other corner of the vestibule. The group of officers all struggle to restrain \$87(2)(0) by grabbing his body and arms, and pushing him into the corner of the room, where they hold him. \$87(2)(0) becomes more compliant, is placed in handcuffs, and brought out of the building.

During this same period, \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ is initially in the corner of the vestibule behind and is outside of the camera's field of vision. All of the officers in that area of the room are struggling to restrain \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ as described above at that time, however, and no officers make any motions consistent with throwing punches in \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ s direction. \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ moves out of the corner as \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ by the body and push him into another corner of the vestibule. Three officers grab \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ by the body and push him into another corner of the vestibule, as he tries to walk to the corner where \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ is struggling with PO McAvoy, PO Eng, and PO Christensen. At 1:40, \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ pushes his way out of the officers' grasp, and is pinned in a different corner by several officers. \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ continues to try to push officers away and move out of the officers' grasps until PO Howard enters the vestibule at 2:10, at which point \$\frac{\text{\$87(2)(0)}}{\text{\$10}}\$ is placed in handcuffs, and then brought out of the building.

alleged that, after \$87(2)(b) grabbed PO McAvoy and tried to push him away from \$87(2)(b) PO McAvoy punched \$87(2)(b) in the jaw. He alleged that \$87(2)(b) was subsequently punched approximately ten to fifteen times in total by multiple officers during the ensuing struggle, although he could not say which officers punched \$87(2)(b) besides PO McAvoy, nor could he say where these subsequent punches landed on \$87(2)(b) alleged that he was also punched approximately fifteen times in total by five to six officers inside of the vestibule. \$87(2)(b) refused to give a statement to the CCRB, and \$87(2)(b) could not describe any force used against \$87(2)(b) or \$87(2)(b) or \$87(2)(b) was grabbing their arms to restrain them so they could be placed in handcuffs.

As the video footage does not show the punches alleged by \$87(2)(0) with the exception of the ones covered in the previous allegation, and is generally consistent with the officers' statements, the investigation determined by a preponderance of the evidence that the force used by the officers inside of the vestibule consisted of grabbing and pushing \$87(2)(0) and \$87(2)(0) in an effort to corner and restrain them so they could be handcuffed. Both individuals resisted by pushing the officers away, and generally struggling with their bodies to escape the officers' grasp.



Allegation H – Abuse of Authority: Near \$87(2)(b) in Staten Island, an officer refused to provide his shield number to \$87(2)(b) Allegation I – Discourtesy: Inside of the 120 th Precinct stationhouse, an officer spoke rudely to \$87(2)(b)
§ 87(2)(g)
Allegation J – Other: PO Michael McAvoy intentionally made a false official statement to the CCRB, in violation of Patrol Guide Procedure 203-08.
As discussed in Allegation F , the investigation determined that PO McAvoy's allegation that \$87(2)(b) punched him in the face upon first entering the vestibule of \$87(2)(b) causing PO McAvoy to slam his head against the wall of the vestibule, was false. PO McAvoy was shown the section of video footage corresponding to this part of the incident twice during his CCRB interview. Upon viewing the video which clearly contradicted his statement, PO McAvoy would only say that he was trying to "get to" \$87(2)(b) that four other civilians were in the room at the time, and the odds were against him. He refused to retract his false statement in any capacity. PO McAvoy also stated that the force of the punch and the subsequent slamming of his head into the wall caused him to sustain a concussion. \$87(2)(d)
§ 87(2)(g)
According to section 203-08 of the NYPD Patrol Guide, officers are prohibited from intentionally making false official statements to the CCRB (30 Board Review).

Team:		
Investigator:Signature	Print	
Supervisor: Title/Signature		 Date
Reviewer: Title/Signature	Print	Date
Reviewer: Title/Signature	Print	 Date